



SOCIONEWS



LAW

CONDITIONS FOR GRANTING FAMILY ALLOWANCES AND PARENTAL LEAVE BROUGHT INTO LINE WITH EU LAW

The main purpose of a law dated 23 December 2022¹ is to modify the conditions for granting family allowances and parental leave in order to bring national law into line with European law.

This law came into force on 27 December 2022.

1. FAMILY ALLOWANCES

1.1 Conditions for eligibility

a. Modified legal provisions

The beneficiaries of family allowances were children residing in Luxembourg as well as the biological and adopted children of frontier workers or pensioners.

This excluded children of an employee's spouse or partner from a previous relationship, which was considered by the Court of Justice of the EU (CJEU) to be indirect discrimination on grounds of nationality.

The CJEU² has asked Luxembourg to comply with the European definition of "family members" which includes children of a spouse or partner.

b. New legal provisions

Children of an employee's spouse or partner for whom the employee provides maintenance and with whom he or she legally shares a common domicile and an effective and continuous residence are now also considered to be family members. Proof of these conditions may be provided by any means.

¹ Amending: 1° of the Social Security Code; 2° of the Labour Code; 3° of the amended law dated 16 April 1979 establishing the staff regulations of State officials; 4° of the amended law dated 24 December 1985 establishing the staff regulations of municipal civil servants. Memorial A668 Parl. Doc. No. 7828

² CJEU judgment C-802/18 dated 2 April 2020



A frontier worker can therefore claim child benefits for his or her biological and adopted children and for the children of his or her spouse or partner with whom he is cohabiting.

1.2 Person to whom child benefits are paid

This law adds that, at the joint request of the parents, the payment of the family allowance may be shared equally between the two parents in the event of joint parental authority and alternating residence of the child.

2. PARENTAL LEAVE

Formerly parents were required to be registered with the Luxembourg social security system at the time of the birth or reception of a child or children to be adopted without interruption for at least twelve continuous months immediately preceding the start of the parental leave.

According to the CJEU³, "According to the Court, excluding parents who were not working at the time of the birth or adoption of their child would have the effect of precluding the possibility for them to take parental leave at a later point in time in their lives when they are employed again, parental leave which they would need to take in order to reconcile their family and professional responsibilities. Such an exclusion would be contrary to the

individual right of every worker to parental leave. In addition, the twofold condition imposed by the Luxembourg legislation leads, in actual fact, in the case where the birth or reception occurred more than 12 months before the start of the parental leave, to an extension of the required period of work and/or length of service, which cannot exceed one year. Accordingly, the Court concludes that a Member State cannot make a parent's right to parental leave subject to the condition that that parent is working at the time of the birth or adoption of his or her child."

This law therefore abolishes the condition of registration with Luxembourg's social security system at the time of the birth or reception of the child.

³ Judgment C-129/20 of the CJEU dated 27 February 2021